LeMond Cycling, Inc. v. Trek Bicycle Corporation
Doc. 152 Att. 1

EXHIBIT 2

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December 23, 2008

VIA E-MAIL

Ralph A. Weber, Esq.
Gass Weber Mullins LLC
309 North Water Street
Milwaukee, WI 53202

Re: *LeMond Cycling, Inc. v. Trek Bicycle Corporation*
Case No. 08-CV-01010 (RHK/JSM)
Our File No. 123595-0000

Dear Ralph:

I write in response to your two letters of December 19, 2008. First, to the degree I am able at this point in time, I will address the 29 issues you raised regarding LeMond Cycling's responses to Trek's Discovery requests.

Interrogatory Nos. 1 and 2. It is LeMond Cycling's position that any entities that are not related to the cycling industry are not remotely relevant to this litigation. Consistent with that sensible parameter, LeMond Cycling attempted to identify all cycling-related business entities in which Mr. LeMond held an ownership interest. In the interest of closure, we will undertake an effort to confirm that we have identified all such entities and will supplement our response to Interrogatory No. 1 should we find that we have inadvertently neglected to identify any such entities. Mr. LeMond has engaged in numerous non-cycling businesses since 1985 which are not remotely related to any market for bicycles or any of Trek's claims. Interrogatory No. 2 asks for similarly irrelevant information.

Interrogatory No. 3. As LeMond Team Sports, Inc. and Wayzata, Inc. are no longer active entities, we have not located any gross earnings statements. Additionally, we are currently confirming that Wayzata, Inc. was merely a predecessor company to LeMond Cycling, Inc., and as such, was never in competition with any Agreements with Trek.

In discussing **Interrogatory Nos. 4, 6-9 and Document Request Nos. 6, 16, 18**, you referenced Mr. LeMond's deposition testimony. We do not necessarily agree with your characterizations of

Mr. LeMond's testimony and have not yet received a copy of the deposition transcript. Until we have the transcript, we are unable to fairly review the testimony you reference in your letter and thoroughly address many of the issues you raise. If you have a copy of the transcript, please it would be helpful to this effort for you to provide it. In the interest of providing you some information prior to our review of that transcript, however, we respond as follows.

- We have produced all responsive recorded conversations that we have located except for the recordings of Ms. Andreu which are subject to protection under the work-product doctrine and are listed on LeMond Cycling's Privilege Log at LCI PRIV 00202-03.

- We have produced all emails related to bike transactions handled by Ms. Haigh that are in LeMond Cycling's possession or control (*see, e.g.*, LCI 03309-12) and do not believe that Ms. Haigh retained any documents when she left LeMond Cycling. Although Ms. Haigh is no longer an employee of Mr. LeMond, we are willing to reach out to her to determine whether she has retained any documents responsive to your requests. We are willing to supplement our production in the unlikely event that she has retained any such documents.

- We are willing to produce LeMond Cycling, Inc.'s contracts regarding cycling-related endeavors. As stated in our objections, we are not willing to produce all documents with all "business colleagues."

Request Nos. 1-5, 7. Based on our understanding of your requests, and subject to the objections stated in LeMond Cycling's responses, we believe that we have produced all documents responsive to these requests. We are willing, however, to undertake a second confirmatory check. As to Request No. 4 specifically, please note that the PTI/Target matter was handled by Mr. LeMond's agent at that time and all documents relating to the matter would have been held but this individual. Regarding Request No. 5, we disagree that we "produced only a handful" of responsive documents. (*See, e.g.*, LCI 01973, 01983-92, 01997-99 etc.) Still, please recall that Trek scheduled many of Mr. LeMond's personal appearances, and therefore, the documents relevant to this request are more likely than not solely in Trek's possession and control.

Request No. 8. As noted in the email you referenced in your letter, Ms. Cushing forwarded that particular response as an example and there is no evidence that she forwarded any other responses to Mr. LeMond. We will contact Ms. Cushing, however, in an effort to obtain any additional responsive documents.

Request No. 9. We have detailed our objections to this Request in LeMond Cycling's Response. Without belaboring our objections by reiterating them here, it is clear on the face of this Request, that it is not limited in *any way* to this lawsuit. As previously stated, we are willing to work with Trek to narrow the scope.

Request No. 11. Documents concerning LeMond Cycling's claimed damages are in the possession and control of Trek, and are an example of a category of documents which LeMond Cycling has been struggling to obtain from Trek.

Request Nos. 13, 14, 26. Trek's discovery requests were served on LeMond Cycling, not Mr. LeMond. More importantly, I fail to see how such a request, or similar requests as to other business entities, are at all relevant to this litigation. Trek has made a damage claim based on Mr. LeMond's contractual bike allowance and the very well established ability to purchase bikes at employee pricing. Mr. LeMond's tax returns have nothing to do with either the contract, the employee pricing purchases, or any possible claim to damage. Until you can help me understand what relevant purpose is served related to Trek's claim, your request seems like an unnecessary intrusion into Mr. LeMond's personal finances.

Request No. 15. In your letter you have articulated a different request than that which is contained in your discovery requests. Without waiving any of our previously stated objections, we are willing to consider your current, more narrowly tailored request. Please note, however, that in the case of some of the matters you have listed, the litigation was years ago and involved thousands of pages of documents and transcripts, some of which are confidential or highly confidential and may even have been destroyed pursuant to the relevant protective orders. Once we have had an opportunity to assess this newly articulate request, which was only provided late on Friday afternoon, we will follow up with our position regarding this request.

Last, I wish to respond briefly to your purported surprise at our meet and confer statement. I wrote to you on November 14, 2008 regarding our concerns with the deficiencies in Trek's discovery responses. Having not received a substantive response, I wrote again on December 3, 2008 and requested Trek's position on these issues so that we could resolve them and notice depositions that were dependant on the discovery we had not received. I explicitly noted in that letter that if we had not received a response by the end of the week, we would have no choice but to move to compel. Instead of a response, you provided a supplemental production that in no way addressed some of the requests on which we requested Trek's position. As is clear from your most recent correspondence, Trek is indeed refusing to provide discovery based on certain requests, although you seemed disinclined to state so until we filed our motion. As our motion is intended to do, we will rely on the Court to resolve this matter so that discovery can continue.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Denise S. Rahne

DSR/bsb